

AMENDED IN ASSEMBLY JANUARY 4, 2012

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 593**

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**Introduced by Assembly Member Ma**

February 16, 2011

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An act to amend Section 1473.5 of add Chapter 6 (commencing with Section 1566) to Title 12 of Part 2 of the Penal Code, relating to domestic violence.

### LEGISLATIVE COUNSEL'S DIGEST

AB 593, as amended, Ma. Domestic violence: battering: ~~writ of habeas corpus~~; recall and resentencing.

Existing law authorizes every person who is unlawfully imprisoned or restrained of his or her liberty to prosecute a writ of habeas corpus to inquire into the cause of that imprisonment or restraint.

Existing law also provides, until January 1, 2020, that a writ of habeas corpus may be prosecuted on the basis that expert testimony relating to intimate partner battering and its effects was not received in evidence at the trial court proceedings relating to a prisoner's incarceration for the commission of a violent felony committed prior to August 29, 1996, if there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction, that if the testimony had been admitted, the result of the proceedings would have been different.

This bill would authorize a defendant who suffered intimate partner battering and its effects, and who was convicted of one or more violent felonies, as specified, that were committed before August 29, 1996, and which resulted in a judgment of conviction after a plea or trial in which

*expert testimony on intimate partner battering and its effects was either not received into evidence or was limited, to file a petition, containing specified statements by the defendant, with the sentencing court for recall and resentencing if, during the crime, the defendant was in imminent danger or under duress, or acting in self-defense. The bill would require that a copy of the petition be served on the prosecuting agency. The bill would require that a reply to the petition, if any, be filed with the court within 60 days of the date on which the prosecuting agency was served the petition, unless a continuance is granted for good cause. The bill would require the court to hold a hearing to consider the defendant's statements, expert testimony, and any other new relevant information to determine whether, had the information been received into evidence at the trial court proceedings, there is a reasonable probability that the result of the proceedings would have been different. In that case, the bill would authorize the court to recall the sentence and commitment previously ordered and resentence the defendant, provided that the new sentence, if any, is not greater than the initial sentence.*

~~Existing law, operative until January 1, 2020, establishes circumstances under which a writ of habeas corpus may be prosecuted for certain violent felonies on the basis of expert testimony regarding intimate partner battering that was not received in evidence at trial and may be sufficient to undermine confidence in the conviction, as specified.~~

~~This bill would delete the repeal clause for those provisions and thus extend the operation of those provisions indefinitely.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Chapter 6 (commencing with Section 1566) is  
2     added to Title 12 of Part 2 of the Penal Code, to read:

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4     CHAPTER 6. DEFENDANTS WHO ARE VICTIMS OF DOMESTIC  
5     VIOLENCE: RECALL AND RESENTENCING

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7     1566. (a) (1) A defendant who was convicted of one or more  
8     violent felonies as specified in subdivision (c) of Section 667.5 that  
9     were committed before August 29, 1996, who suffered intimate

1 partner battering and its effects, and which resulted in a judgment  
2 of conviction after a plea or trial shall be permitted to submit a  
3 petition for recall and resentencing if, during each crime, the  
4 defendant was in imminent danger or duress or if the defendant  
5 acted in self-defense.

6 (2) This section applies only to cases where expert testimony  
7 on intimate partner battering and its effects, within the meaning  
8 of Section 1107 of the Evidence Code, was not received into  
9 evidence or was limited during the trial court proceedings and  
10 expert testimony admissible pursuant to Section 1107 of the  
11 Evidence Code would be of probative value in regard to the  
12 defendant's culpability or sentencing.

13 (b) (1) The defendant shall file the original petition with the  
14 sentencing court. A copy of the petition shall be served on the  
15 agency that prosecuted the case. The petition shall include all of  
16 the following statements by the defendant:

17 (A) That he or she was convicted of one or more violent felonies  
18 as specified in subdivision (c) of Section 667.5 that were committed  
19 before August 29, 1996.

20 (B) That he or she suffered the effects of intimate partner  
21 battering at the time of the violent offense or offenses.

22 (C) That expert testimony on intimate partner battering was not  
23 received into evidence or was limited during the trial court  
24 proceedings.

25 (D) That intimate partner battering and its effects were directly  
26 related to his or her participation in the violent offense or offenses.

27 (E) A description of his or her actions while committing the  
28 crime and the circumstances surrounding those actions that  
29 demonstrate either that the crime was committed while the  
30 defendant was in imminent danger or under duress, or that the  
31 defendant was forced to act in self-defense in committing the crime.

32 (c) As used in this section, "trial court proceedings" means  
33 those court proceedings that occur from the time the accusatory  
34 pleading is filed until and including judgment and sentence.

35 (d) If any of the information required in subdivision (b) is  
36 missing from the petition, or if proof of service on the prosecuting  
37 agency is not provided, the court shall return the petition to the  
38 defendant and advise the defendant that the matter cannot be  
39 considered without the missing information.

1 (e) A reply to the petition, if any, shall be filed with the court  
2 within 60 days of the date on which the prosecuting agency was  
3 served the petition, unless a continuance is granted for good cause.

4 (f) The court shall hold a hearing to consider the defendant's  
5 statements, expert testimony regarding intimate partner battering  
6 and its effects, and any other new, relevant information, including  
7 all of the factors described in subdivision (g) to determine whether,  
8 had the information been received into evidence at the trial court  
9 proceedings relating to the prisoner's incarceration, there is a  
10 reasonable probability that the result of the proceedings would  
11 have been different. In that case, the court may recall the sentence  
12 and commitment previously ordered and resentence the defendant,  
13 provided that the new sentence, if any, is not greater than the initial  
14 sentence. Victims, or victim family members if the victim is  
15 deceased, shall retain the right to participate in the hearing.

16 (g) The factors that the court may consider in the hearing held  
17 pursuant to subdivision (f) include, but are not limited to, the  
18 following:

19 (1) The defendant's history of physical, sexual, and emotional  
20 abuse or trauma.

21 (2) The defendant does not have juvenile felony adjudications  
22 for assault or other felony crimes with a significant potential for  
23 personal harm to victims prior to the offense for which the sentence  
24 is being considered for recall.

25 (3) The effects of intimate partner battering at the time of the  
26 commitment offense.

27 (4) The defendant has performed acts that tend to indicate  
28 rehabilitation or the potential for rehabilitation, including, but  
29 not limited to, availing himself or herself of rehabilitative,  
30 educational, or vocational programs, if those programs have been  
31 available at his or her classification level and facility, using  
32 self-study for self-improvement, or showing evidence of remorse.

33 **SECTION 1.** ~~Section 1473.5 of the Penal Code is amended to~~  
34 ~~read:~~

35 ~~1473.5. (a) A writ of habeas corpus also may be prosecuted~~  
36 ~~on the basis that expert testimony relating to intimate partner~~  
37 ~~battering and its effects, within the meaning of Section 1107 of~~  
38 ~~the Evidence Code, was not received in evidence at the trial court~~  
39 ~~proceedings relating to the prisoner's incarceration, and is of such~~  
40 ~~substance that, had it been received in evidence, there is a~~

1 reasonable probability, sufficient to undermine confidence in the  
2 judgment of conviction, that the result of the proceedings would  
3 have been different. Sections 1260 to 1262, inclusive, apply to the  
4 prosecution of a writ of habeas corpus pursuant to this section. As  
5 used in this section, “trial court proceedings” means those court  
6 proceedings that occur from the time the accusatory pleading is  
7 filed until and including judgment and sentence.

8 (b) This section is limited to violent felonies as specified in  
9 subdivision (c) of Section 667.5 that were committed before August  
10 29, 1996, and that resulted in judgments of conviction after a plea  
11 or trial as to which expert testimony admissible pursuant to Section  
12 1107 of the Evidence Code may be probative on the issue of  
13 culpability.

14 (c) If a petitioner for habeas corpus under this section has  
15 previously filed a petition for writ of habeas corpus, it is grounds  
16 for denial of the new petition if a court determined on the merits  
17 in the prior petition that the omission of expert testimony relating  
18 to battered women’s syndrome or intimate partner battering and  
19 its effects at trial was not prejudicial and did not entitle the  
20 petitioner to the writ of habeas corpus.

21 (d) For purposes of this section, the changes that become  
22 effective on January 1, 2005, are not intended to expand the uses  
23 or applicability of expert testimony on battering and its effects that  
24 were in effect immediately prior to that date in criminal cases.